

1 IN THE UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF TENNESSEE

3 AT CHATTANOOGA

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 REJON TAYLOR,

8 Defendant.

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1:04-CR-160

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10 Chattanooga, Tennessee
October 21, 2008

11 BEFORE: THE HONORABLE CURTIS L. COLLIER,
12 CHIEF UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 FOR THE PLAINTIFF:

15 STEVEN S. NEFF
CHRISTOPHER D. POOLE
Assistant United States Attorney
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17 FOR THE DEFENDANT:

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Chattanooga, Tennessee 37402

22
23 JURY TRIAL
24 NINETEENTH DAY OF TRIAL
25

UNITED STATES DISTRICT COURT

1 APPEARANCES: (Continuing)

2

3 FOR THE DEFENDANT:

4 LESLIE A. CORY
 5 FREDERICK L. ORTWEIN
 6 1010 Market Street, Suite 306
 7 Chattanooga, Tennessee 37402

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10 INDEX OF PROCEEDINGS

11

12 Verdict 2668

13

14

15 DEFENDANT'S EXHIBIT

16

17 DS20 Proposed response to communication from 2685
 18 the jury
 19 (For identification only)

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1 (IN OPEN COURT)

2 THE COURT: Ladies and gentlemen, I apologize for the
3 confusion. When you left on last Wednesday, I told you that
4 you should just go directly to the jury deliberation room and
5 once the last person had arrived you could start your
6 deliberations. But because of the long break that we took in
7 the case, the attorneys have asked that I inquire of you
8 whether anyone has been exposed to any publicity or other
9 extraneous communication or information regarding the trial
10 during the break from last Wednesday until this morning. If
11 anyone has been exposed to such publicity or other extraneous
12 communication, just raise your hand.

13 (Brief pause.)

14 THE COURT: Okay. There is a negative reply from all
15 members of the jury. I will then order that the jury return to
16 the jury deliberation room to continue with your deliberations.
17 Okay. The jury can leave the courtroom now.

18 (The jury exited the courtroom, and the proceedings
19 continued as follows:)

20 (Brief pause.)

21 THE COURT: Be seated. You may have seen that we
22 only had five alternates present this morning, one of the
23 alternates was not here. The Court has been advised that the
24 son of that alternate was involved in a very serious automobile
25 accident on Friday and he's in the intensive care unit at

1 Erlanger now and the alternate, the father, is with him there.
2 Unless someone has some objection, then I would propose that we
3 just excuse that alternate.

4 MR. NEFF: I agree, Your Honor.

5 MS. CORY: We have no objection, Your Honor.

6 THE COURT: That alternate, then, is excused.

7 The jury also inquired this morning if they could
8 get another copy of the verdict form. They've marked up the
9 original one, and they asked if they could get another one.
10 So I authorized Ms. Palmer to obtain a clean copy of the
11 verdict form and give it to them. I don't think she has done
12 it.

13 Have you done that yet, Ms. Palmer?

14 THE CLERK: No, sir.

15 THE COURT: Okay. She has it here. If anyone would
16 like to look at it before it goes back, just contact her.

17 Okay. Is there anything else we need to take up?

18 MR. POOLE: No, thank you.

19 MS. CORY: No, sir.

20 (Recess for deliberations.)

21 THE COURT: Please be seated.

22 The Court has received a communication from the
23 jury. The communication asks what happens if they cannot
24 reach a unanimous verdict. The Court proposes the following
25 response to their question, quote, "You have asked what

1 happens if the jury cannot reach a unanimous verdict. This is
2 a question that is often asked in trials taking a considerable
3 amount of time or involving difficult issues. It is not
4 uncommon for there to be disagreement or for jurors to find it
5 difficult to reach a unanimous decision. However, we can only
6 ask that the jury try its best to work out its differences."

7 The Court has shared this proposed response with the
8 parties, and the Court is informed that the government does
9 not have any objection to it but that the defendant does.

10 Mr. Ortwein?

11 MR. WILLIAM ORTWEIN: Yes, Your Honor. Ms. Cory may
12 have to help me with this argument, candidly. I think,
13 Number 1, you could interpret this question two different ways.
14 First of all, it could be that they can't -- they're saying
15 they cannot reach a unanimous verdict, "So what are we to do?"
16 which simply would be to report that to the Court, and if the
17 Court wanted to add in there that the Court will then sentence
18 the defendant to a life sentence, or it could be interpreted to
19 request a legal answer.

20 As I understand, Judge—this is where Ms. Cory may
21 have to help me—originally we requested in the jury charge
22 that Your Honor charge the jury to the effect that if it was
23 not a unanimous decision, that the defendant would be
24 sentenced to life. I understand, obviously, that is the law.
25 The Court, as I -- according to Ms. Cory, at least, found some

1 cases that said that it shouldn't be told that that early on.
2 And so the Court did not submit that to the jury at that time.

3 However, at this point in time, the jury, under my
4 alternative interpretation of the question, is specifically
5 asking the Court what happens. And we believe that the law
6 being obvious, that the Court should advise the jury that if
7 the jury does not reach a unanimous decision, then the Court
8 will sentence the defendant to life imprisonment without
9 parole, period, which is the law.

10 As I say, to me, there are two separate
11 interpretations of the question. But I do -- I believe that
12 the Court has an obligation to answer the exact question by
13 the jury as to what the law is, which is, under my second
14 theory, what the jury wants to know, is what happens. As I
15 say, I can read it two different ways. What happens? Well,
16 first of all, then you need to report it to the Court if you
17 can't, period, or, under the second interpretation, would be
18 that the defendant would receive a life sentence, the Court
19 would sentence the defendant to a life sentence.

20 Under either interpretation, I think that the Court
21 could reply that if the jury cannot reach a unanimous
22 decision, then they should report that to the Court and the
23 Court will then sentence the defendant to life imprisonment,
24 and that that would be the proper response. And it is the
25 law, rather than-- With all due respect to Your Honor, I

1 really don't believe that the proposed answer or reply
2 addresses the question asked by the jury.

3 THE COURT: Thank you, Mr. Ortwein.

4 Would the government like to add anything?

5 MR. NEFF: Well, Your Honor, I don't think the Court
6 has an obligation to say those things. Obviously we provided
7 the case law that the Court took under advisement when the
8 Court first gave the instructions that it gave. And the
9 government certainly does have a very strong interest in having
10 the jury reach a unanimous decision. There are a lot of things
11 that constitute the law that the jury is not instructed on.

12 If the jury sent out a question asking, "Well, what
13 happens if the Sixth Circuit overturns the conviction?" I
14 don't think the Court is obligated to answer that just because
15 it's a question about what the law is. This falls into that
16 category. Just because it's true doesn't mean it needs to be
17 or should be said, because of the competing interests
18 involved. So the case law, I think, is very clear, both
19 Sixth Circuit and Supreme Court, about the interest in a
20 unanimous verdict. And this response the Court has proposed,
21 I think, adequately addresses the question that the jury has
22 asked.

23 THE COURT: Thank you.

24 At the time of the jury charge, the Court had in the
25 proposed instructions some language as to what happens if

1 there is not a unanimous decision with regard to death. The
2 government objected to that language and pointed the Court to
3 some cases, a Supreme Court case, plus Sixth Circuit cases.
4 After the Court read those cases, the Court did learn that the
5 Sixth Circuit discourages judges from instructing the jury to
6 that effect. At this point, then, in light of those
7 Sixth Circuit cases and the authorities that the government
8 alluded to, the Court does not feel it appropriate to go much
9 further than what the Court is doing now.

10 As Mr. Ortwein said, the questions are susceptible
11 to multiple interpretations. One interpretation could be that
12 they are deadlocked and they're asking what to do. Another
13 interpretation could be they're just asking out of curiosity.
14 Another interpretation is that they're having some difficulty
15 but they have not reached deadlock now.

16 One of the advantages to the instructions the Court
17 gives is, it allows them to tell us specifically what the
18 issue is. If they're deadlocked—this is a very intelligent
19 jury—they'll tell us that. If they need something else, they
20 will tell us that, also. What the instruct- -- what the
21 communication does, in essence, is to repeat what the Court
22 told the jury at the end of the instructions—do their best,
23 work hard, and try to work out their differences.

24 So the Court, then, will affix its signature to the
25 instruction. The Court will give it to Ms. Palmer and

1 instruct Ms. Palmer to give it to the jury.

2 The jury has also asked if they could take lunch.

3 As soon as Ms. Palmer returns back from delivering it to the
4 jury, the Court will have the jury brought in and release it
5 for lunch.

6 Mr. Ortwein?

7 MR. WILLIAM ORTWEIN: Just for the purpose of the
8 record, Judge, I want to make it clear that we do object to the
9 charge that Your Honor is going to give to it.

10 THE COURT: Ms. Palmer, would you please take the
11 Court's communication to the jury.

12 (Brief pause.)

13 MR. POOLE: Judge, if I might ask a procedural
14 question. This is on down the line, obviously, but for our
15 victim's sake, if the jury were to come back hung or come back
16 with a life without parole or, I guess, come back with whatever
17 the verdict is, does Your Honor foresee setting a sentencing
18 hearing off? I know that often in life sentences a PSR is
19 prepared; I don't believe they are supposed to be in a sentence
20 of death. But just as far as letting our victim know when or
21 if there might be a day when sentence would actually be
22 pronounced, or does Your Honor have a plan with regards to
23 that?

24 THE COURT: Mr. Ortwein?

25 MR. WILLIAM ORTWEIN: Your Honor, technically I

1 thought the Court went ahead, once the jury came back with a
2 verdict, and entered sentence at that point. I may-- I
3 haven't looked at that. That was just my
4 off-the-top-of-my-head conclusion.

5 THE COURT: Is there any reason why a presentence
6 report should not be prepared? It may be beneficial to the
7 Bureau of Prisons.

8 Ms. Cory?

9 MR. WILLIAM ORTWEIN: Well, they do go --

10 MS. CORY: Your Honor, I would say that the Bureau of
11 Prisons is going to request a post-sentence report, which would
12 contain all the information that's relevant to Mr. Taylor that
13 the Bureau of Prisons needs. But in terms of the amount of
14 information that would ordinarily go into the presentence
15 report, the facts of the offense and guideline calculations and
16 that sort of thing would be irrelevant. So the Court could
17 impose sentence and then order the probation office to do a
18 post-sentence report.

19 MR. POOLE: I was just wondering.

20 THE COURT: Mr. Poole, are you saying that because
21 you think that the relatives or friends of the victim would
22 like a chance to speak?

23 MR. POOLE: Judge, I think that Ms. Belcher, at
24 least, might like a chance to speak. I think she would like to
25 be here. However, she knew that the jury -- she is in Atlanta,

1 obviously, and she knew the jury could be out for any number of
2 time, so she has chosen not to wait in Chattanooga at a hotel
3 during last week and this week. But she had asked us whether
4 there would be another date. Quite frankly, I told her I would
5 ask the Court but I didn't know if there would be. I think she
6 would show up if there was another date, and might wish to
7 speak.

8 THE COURT: Is this the type of offense where victims
9 have a right to speak?

10 MR. POOLE: Yes, I think it is. Now, whether or not
11 she technically qualifies as a victim might be -- might be the
12 issue, Judge.

13 THE COURT: Ms. Cory, do you know, is this the type
14 of case where victims have a right to speak?

15 MS. CORY: Your Honor, it's a crime of violence. I
16 would assume--

17 (Brief pause.)

18 MS. CORY: I'm sorry. A juror started to walk in. I
19 would assume that it is that type of offense. And she, of
20 course, has already had an opportunity to testify. And I don't
21 think she would qualify under the definition of a victim for
22 purposes of the statute, nor do I know that her daughter, the
23 younger Ms. Belcher, would qualify. I'd be happy to look into
24 it.

25 THE COURT: We'll take a look at that.

1 MR. POOLE: Thank you.

2 THE COURT: Ms. Palmer.

3 (Brief pause.)

4 (The jury entered the courtroom, and the proceedings
5 continued as follows:)

6 THE COURT: Please be seated.

7 Ladies and gentlemen, it's a little bit after 12:00.
8 Why don't you go ahead and take your lunch break now. Why
9 don't you try to get back at 1:30. And as I've said in the
10 past, do not begin deliberating until the twelfth person has
11 returned. And also recall my earlier instructions regarding
12 watching, reading, or listening to anything at all about this
13 case or talking about it.

14 Ms. Palmer.

15 (Luncheon recess.)

16 (Recess for deliberations.)

17 (The jury entered the courtroom, and the proceedings
18 continued as follows:)

19 THE COURT: Please be seated.

20 The Court has received another communication from
21 the jury. The communication states that the jury has reached
22 a verdict.

23 Has the jury reached a decision in this case?

24 THE FOREPERSON: Yes, sir.

25 THE COURT: If you would, please give the verdict

1 form to Ms. Palmer.

2 (Brief pause.)

3 THE COURT: Mr. Ortwein, would you and your client
4 please stand and face the jury.

5 Ms. Palmer, would you please announce the jury's
6 decision from the verdict form.

7 THE CLERK: "We, the jury, unanimously find that the
8 government has proved beyond a reasonable doubt:

9 "1. Age of Defendant.

10 "Defendant was 18 years of age or older at the time
11 of the offense."

12 The answer is, "Yes."

13 "2. Requisite Mental State.

14 "Defendant intentionally killed the victim."

15 The answer is, "Yes."

16 "Defendant intentionally inflicted serious bodily
17 injury that resulted in the death of the victim."

18 The answer is, "Yes."

19 "Defendant intentionally participated in an act,
20 contemplating that the life of a person would be taken or
21 intending that lethal force would be used in connection with a
22 person other than one of the participants in the offense, and
23 the victim died as a direct result of the act, which directly
24 resulted in the death of Guy Luck."

25 And the answer is, "Yes."

1 "Defendant intentionally and specifically engaged in
2 an act of violence, knowing that the act created a grave risk
3 of death to a person other than one of the participants in the
4 offense, such that participation in the act constituted a
5 reckless disregard for human life, and Guy Luck died as a
6 direct result of the act."

7 The answer is, "Yes."

8 "Number 3. Statutory Aggravating Factors.

9 "The death, or injury resulting in death, occurred
10 during the commission of kidnapping."

11 The answer is, "Yes."

12 "Defendant committed the murder after substantial
13 planning and premeditation to cause the death of Guy Luck."

14 The answer is, "Yes."

15 "4. Nonstatutory Aggravating Factors.

16 "Defendant attempted to escape from a detention
17 facility in Chattanooga, Tennessee, on April 14, 2006, and
18 that this factor tends to support imposition of the death
19 penalty."

20 The answer is, "No."

21 "Defendant would be a danger in the future to the
22 lives and safety of other persons, and that this factor tends
23 to support imposition of the death penalty."

24 The answer is, "Yes."

25 "Defendant caused injury, harm, and loss to Guy Luck

1 and his family and friends, and that this factor tends to
2 support imposition of the death penalty."

3 The answer is, "No."

4 "Number 5. Mitigating Factors.

5 "A. Alternative Sentence.

6 "Number 1. If he is not sentenced to death, Rejon
7 Taylor will be incarcerated for the rest of his life in a
8 federal prison with no possibility of release."

9 "Number of jurors who so find: Twelve.

10 "B. Circumstances of the Crime.

11 "2. There was a struggle for a gun before Guy Luck
12 was shot.

13 "Number of jurors who so find: Zero.

14 "3. While there is sufficient evidence of Rejon
15 Taylor's guilt, the evidence does not establish Rejon Taylor's
16 guilt of the capital crime of intentionally killing Guy Luck
17 with sufficient certainty to justify imposition of a sentence
18 of death.

19 "Number of jurors who so find: Zero.

20 "4. While there is sufficient evidence of Rejon
21 Taylor's guilt, the contradictory statements of the
22 government's witnesses does not remove all doubt.

23 "Number of jurors who so find: Zero.

24 "5. There is or scientific or physical evidence,
25 such as DNA, showing whether Rejon Taylor or Sir Jack Matthews

1 killed Guy Luck.

2 "Number of jurors who so find: Zero.

3 "C. Relative Culpability.

4 "6. Sir Jack Matthews will not be sentenced to
5 death for his role in the murder of Guy Luck, despite his
6 history of violence.

7 "Number of jurors who so find: Zero.

8 "7. Joey Marshall, who was involved in the escape
9 attempt, will not be sentenced to death for his role in the
10 murder of Mr. Luck.

11 "Number of jurors who so find: Zero.

12 "8. The government's plea bargains with Sir Jack
13 Matthews and Joey Marshall weigh against imposition of a death
14 sentence upon Rejon Taylor.

15 "Number of jurors who so find: Zero.

16 "D. Background of Rejon Taylor.

17 "9. Rejon Taylor was subjected to neglect as a
18 child.

19 "Number of jurors who so find: Zero.

20 "10. Rejon Taylor was exposed to violence within
21 the home as a child.

22 "Number of jurors who so find: Nine.

23 "11. Rejon Taylor's father subjected him to
24 emotional abuse.

25 "Number of jurors who so find: Twelve.

1 "Number 12. Rejon Taylor's parents were inadequate.

2 "Number of jurors who so find: Twelve.

3 "13. Rejon Taylor lacked positive male role models
4 in his family. His father was in prison for most of Rejon's
5 life, and his older brother also served time in prison and was
6 involved in criminal behavior.

7 "Number of jurors who so find: Twelve.

8 "E. Character of Rejon Taylor.

9 "14. Rejon Taylor was 18 years old at the time of
10 Guy Luck's death.

11 "Number of jurors who so find: Twelve.

12 "15. At the age of 18, a person has not fully
13 matured.

14 "Number of jurors who so find: One.

15 "16. Rejon Taylor has never before been convicted
16 of a crime.

17 "Number of jurors who so find: Twelve.

18 "17. Rejon Taylor had no prior history of violent
19 criminal conduct.

20 "Number of jurors who so find: Zero.

21 "18. Although not a defense to murder, Rejon
22 Taylor's capacity to appreciate the wrongfulness of his
23 conduct or to conform his conduct to the requirements of law
24 was impaired by his brain's immaturity.

25 "Number of jurors who so find: Zero.

1 "19. Rejon Taylor was immature and lacked the
2 emotional development and decision-making abilities that would
3 be expected in a mature adult.

4 "Number of jurors who so find: Two.

5 "20. Although not a defense to murder, at the time
6 of Guy Luck's death, Rejon Taylor was acting under mental or
7 emotional disturbance.

8 "Number of jurors who so find: Zero.

9 "21. Rejon Taylor has shown kindness and concern
10 for other people in his community.

11 "Number of jurors who so find: Five.

12 "22. Rejon Taylor conducted himself appropriately
13 during the trial.

14 "Number of jurors who so find: Zero.

15 "23. Rejon Taylor has a positive relationship with
16 his defense team.

17 "Number of jurors who so find: Twelve.

18 "24. Rejon Taylor's life has value.

19 "Number of jurors who so find: Twelve.

20 "25. After the shooting, Rejon Taylor was
21 remorseful.

22 "Number of jurors who so find: Zero.

23 "F. Future Adaptation to Prison.

24 "Number 26. While incarcerated at the Hamilton
25 County Jail, Rejon Taylor participated in GED classes.

1 "Number of jurors who so find: Twelve.

2 "27. While incarcerated at the Hamilton County
3 Jail, Rejon Taylor participated in religious programs.

4 "Number of jurors who so find: Twelve.

5 "28. While incarcerated at the Hamilton County
6 Jail, Rejon Taylor encouraged others to study the Bible.

7 "Number of jurors who so find: Twelve.

8 "29. Other than the escape attempt, Rejon Taylor
9 has shown respect for the staff at the Hamilton County Jail.

10 "Number of jurors who so find: Zero.

11 "30. Rejon Taylor was influenced to become involved
12 in an escape by older, more criminally experienced inmates.

13 "Number of jurors who so find: Three.

14 "31. Although two officers were hurt in the escape
15 attempt, Mr. Taylor did not hurt anyone.

16 "Number of jurors who so find: Twelve.

17 "32. Rejon Taylor responds well to structured
18 environments. He would likely make a good adaptation to
19 prison if he were sentenced to life imprisonment.

20 "Number of jurors who so find: Zero.

21 "G. Other Factors.

22 "33. Other factors in Rejon Taylor's childhood,
23 background, or character mitigate against imposition of a
24 death sentence.

25 "Number of jurors who so find: Zero.

1 "Number 6. Determination.

2 "Based upon consideration of whether the aggravating
3 factor or factors found to exist sufficiently outweigh any
4 mitigating factor or factors found to exist: We determine, by
5 unanimous vote, that the sentence to be imposed shall be
6 death.

7 "7. Certifications.

8 "By signing below, each juror certifies that
9 consideration of the race, color, religious beliefs, national
10 origin, or sex of the defendant or the victim was not involved
11 in reaching his or her individual decision, and that the
12 individual juror would have made the same determination
13 regarding a sentence for the crime or crimes in question
14 regardless of the race, color, religious beliefs, national
15 origin, or sex of the defendant or the victims."

16 And it's signed by all twelve jurors.

17 THE COURT: Mr. Ortwein, you and your client may be
18 seated.

19 MR. WILLIAM ORTWEIN: Yes, Your Honor. We would
20 request a poll.

21 THE COURT: Ladies and gentlemen, you heard
22 Mr. Ortwein, state that he would like to have the jury polled.
23 We did this at the conclusion of the first phase of the trial.
24 I'm going to have Ms. Palmer call you by your number. So she
25 will call you by your number, and you can just respond

1 according to your number.

2 Ms. Palmer.

3 THE CLERK: Juror Number 132, is the verdict I have
4 just read your verdict?

5 JUROR 132: Yes.

6 THE CLERK: Juror 158, is the verdict I have just
7 read your verdict?

8 JUROR 158: Yes.

9 THE CLERK: Juror 116, is the verdict I have read
10 your verdict?

11 JUROR 116: (Moving head up and down.)

12 THE CLERK: Juror 144, is the verdict I have just
13 read your verdict?

14 JUROR 144: Yes.

15 THE CLERK: Juror 228, is the verdict I have read
16 your verdict?

17 JUROR 228: Me? Yes.

18 THE CLERK: Juror 115, is the verdict I have read
19 your verdict?

20 JUROR 115: Me? Yes.

21 THE CLERK: Juror 148, is the verdict I have read
22 your verdict?

23 JUROR 148: Yes.

24 THE CLERK: Juror 138, is the verdict I have read
25 your verdict?

1 JUROR 138: Yes.

2 THE CLERK: Juror 256, is the verdict I have read
3 your verdict?

4 JUROR 256: Yes.

5 THE CLERK: Juror 122, is the verdict I have read
6 your verdict?

7 JUROR 122: Yes.

8 THE CLERK: Juror 114, is the verdict I have read
9 your verdict?

10 JUROR 114: Yes.

11 THE CLERK: And, Juror 160, is the verdict I have
12 read your verdict?

13 JUROR 160: Yes.

14 THE COURT: In view of the poll, then, the Court will
15 order the courtroom deputy to file and record the jury's
16 decision. The Court will also order that the jurors' names on
17 various communications with the Court and also on the verdict
18 be redacted. And the numbers can be substituted for their
19 names.

20 Ladies and gentlemen, this will conclude your
21 service as jurors in this case. There are a couple of things
22 I'd like to say to you before you leave, though. First, your
23 service as jurors in this case has been very important. You
24 have served in an extremely important case. And I know that
25 the decision was a very, very difficult decision for you. In

1 our society in the United States we have taken away from
2 government officials the ability to take away a citizen's
3 property or their liberty or even their life, and that's a
4 decision that is reserved to the people. The Preamble of the
5 Constitution says, "We, the people," and the Founders wanted
6 to reserve that to we, the people. And you, as jurors,
7 represent the people.

8 So I'm going to excuse you now. The other comment
9 I'd like to make is, because of the interest in this case, and
10 as you can see from some press people here, there may be some
11 effort to contact you and ask you about the case. I don't
12 have the authority to tell you not to discuss the case with
13 other people now.

14 I would like to let you know, though, that if you
15 decide to talk to people about the case, especially press,
16 what you say may not be reported correctly, and they may not
17 understand exactly what you say, and that might lead to some
18 future proceedings in this case. So I would ask you to
19 exercise some caution. You are not required to speak to
20 anybody about the case. If you do decide to speak to someone,
21 that is your own decision.

22 The lawyers cannot be allowed to speak to you unless
23 this Court specifically authorizes them to do so. And if the
24 Court decides to do that, the Court will let you know in
25 advance.

1 The jury should return to the jury deliberation
2 room, and all 18 jurors can go.

3 (The jury exited the courtroom, and the proceedings
4 continued as follows:)

5 THE COURT: Please be seated.

6 There are two other matters that the Court thinks
7 that we need to go ahead and take care of. The first is, we
8 need to set a date for the imposition of sentence. I would
9 suggest we try to set that about a month out or so.

10 MR. POOLE: Yes, sir.

11 MR. NEFF: That's fine. Thank you, Your Honor.

12 THE COURT: Mr. Ortwein?

13 MR. WILLIAM ORTWEIN: Could I suggest December
14 sometime, Judge? We still have the escape case to contend
15 with, also.

16 THE COURT: How about December 11th at 9:00?

17 MR. NEFF: That's fine. Thank you, Your Honor.

18 MR. CLEMENTS: Judge, I've got to be in the
19 Sixth Circuit for our case. It's a death penalty case, habeas
20 corpus before Your Honor, and it's set the 11th at the
21 Sixth Circuit.

22 THE COURT: Mr. Poole, how long do you think the
23 escape case will take?

24 MR. POOLE: Judge, I wouldn't think it would take
25 more than two, three days at the most. I also know that

1 Ms. McFadden, one of the defense attorneys in the case, may
2 have a conflict on the day it's currently set in December, and
3 might ask for another continuance. I don't know. So...

4 THE COURT: Why don't we set it for December 3rd,
5 then.

6 MR. POOLE: Thank you.

7 THE COURT: That's an off day. That's a Wednesday.
8 9:00 a.m?

9 MR. LEE ORTWEIN: Actually, Judge, yeah, the escape
10 trial starts the 1st.

11 THE COURT: I'm sorry?

12 MR. LEE ORTWEIN: The escape trial starts
13 December 1st.

14 THE COURT: That's right, December 1st. Mr. Poole
15 indicates he thinks it will take two days. He also thinks that
16 there is a good chance that the other defendant will ask that
17 the case be continued.

18 MR. LEE ORTWEIN: That's fine, Judge. I just wanted
19 to make sure the Court knew.

20 THE COURT: Let's go ahead and set it then.

21 After the Court made inquiry of the jurors
22 concerning the press coverage of some statements made by the
23 government, the Court inquired of the jurors and made a report
24 to the attorneys. The Court also indicated that depending
25 upon the decision of the jury, there might be an opportunity

1 for the attorneys to further question the jurors concerning
2 that. I don't know if you have had time to think about that
3 yet. And you may not want to do it right now, even if you
4 would still like to do that.

5 MR. WILLIAM ORTWEIN: We haven't had time to think
6 about it, as far as doing it-- Well--

7 MS. CORY: Your Honor, I hate to think of having to
8 bring them back, but I'm not prepared -- I don't think we are
9 prepared to question them at this time. I think we need to
10 make a decision whether we would like to proceed with that more
11 involved hearing on the jurors.

12 THE COURT: The Court understands that.

13 Mr. Neff, is there anything further the Court must
14 decide today?

15 MR. NEFF: Your Honor, we would move to withdraw the
16 exhibits and substitute photographs for the actual exhibits
17 that we used during the trial. Other than that, we have
18 nothing else.

19 THE COURT: Any objection?

20 MR. WILLIAM ORTWEIN: No, there is-- Well, yes, sir.
21 For purpose of appeal, it may be necessary to go up with the
22 appeal.

23 THE COURT: The government, I believe, indicated they
24 would take either photographs or have written descriptions, and
25 substitute those for the actual exhibits. Some are guns and --

1 MR. NEFF: Shanks.

2 THE COURT: -- weapons.

3 MR. WILLIAM ORTWEIN: Only-- If they're willing to
4 just take photographs of those type things, then that's fine.
5 Otherwise, though, Judge, we think all the documents,
6 statements, et cetera, should remain, as far as the record.

7 MR. NEFF: They do, Judge. We're just talking about
8 the substantive items, the physical evidence.

9 THE COURT: Why don't I do this, then. I will grant
10 the government's motion with the provision that the government
11 confer with the defense counsel and obtain defense counsel's
12 consent to anything that is withdrawn.

13 MR. WILLIAM ORTWEIN: That's fine.

14 MR. CLEMENTS: Your Honor, may I ask the Court a
15 question, please?

16 THE COURT: Yes.

17 MR. CLEMENTS: I would assume that does not mean the
18 exhibits that were just marked for identification, primarily
19 related to Mr. McNally's testimony and Dr. Bell's testimony?

20 THE COURT: That's correct. That's correct.

21 MR. CLEMENTS: Thank you.

22 MR. WILLIAM ORTWEIN: Your Honor, there is one other
23 matter. I think the Court advised that I could take this up
24 later if necessary.

25 When the jury came out and asked their second

1 question, the one about -- to summarize, about if they
2 reported deadlocked, what effect would that have upon the
3 guilt finding, I requested a different communication from the
4 Court to the jury, which, basically, I understand, the Court
5 denied, since the Court did not give that charge after
6 discussing it with the clerk, which reads as follows, and I
7 would just like to make it a part of the record, since the
8 Court did not come out at that particular time to the bench.

9 THE COURT: Thank you, Mr. Ortwein. I had intended
10 to bring that up myself, but it had slipped my mind. You are
11 correct. The last question from the jury asked what would
12 happen if there was a deadlock in the case. And the Court
13 proposed a reply that if there was a deadlock, that would be
14 reported to the Court, the jury would be discharged, and I
15 believe there may have been something -- another sentence. But
16 Mr. Ortwein had requested that the jury also be told that if
17 they were deadlocked, then the Court would impose a sentence of
18 life without the possibility of parole. That was pretty close
19 to a request that had been made earlier that the Court had
20 denied.

21 The Court observed at that time that the Court
22 itself had included in the initial jury charge a statement
23 along those lines. The government had objected to it and
24 pointed out that there was a Supreme Court case plus
25 Sixth Circuit case law that indicated that that language

1 should not be included. So the Court did not include that. I
2 was also told by my staff that there was not the desire that
3 the Court take it up in open court at this time, but that the
4 parties would be willing to have the Court take it up later
5 on, in view of the previous discussions about the same thing.

6 MR. WILLIAM ORTWEIN: Yes, sir. I just want to be
7 sure that it's a part of the record, and that the Court was
8 aware of it, and requested timely. That's basically the
9 reason. What I understood was, if necessary I could bring it
10 up at a later time, it would be considered timely filed and
11 requested.

12 THE COURT: Yes. It was provided to the Court prior
13 to the time the Court signed the communication and had the
14 communication go back to the jury.

15 MR. WILLIAM ORTWEIN: Judge, I don't know if this is
16 necessary, but what I did was, I sort of penciled in on the
17 instruction that was entitled "Communication with the Court"
18 your answer, after the word discharged, "the defendant would be
19 sentenced by the Court to life without parole." If I could
20 just file that for the record.

21 THE COURT: You can. We'll make that an appellate
22 exhibit, also.

23 MR. WILLIAM ORTWEIN: Thank you.

24 THE COURT: Whatever the next numbered appellate
25 exhibit will be that exhibit.

1 (Defendant's Exhibit DS20 was received for
2 identification only.)

3 THE COURT: Anything further, Mr. Ortwein?

4 MR. WILLIAM ORTWEIN: No, sir. I assume we can
5 advise the Court shortly about inquiry of the jury, voir diring
6 the jury about other matters.

7 THE COURT: And you should do that, I would say, as
8 soon as you can.

9 MR. WILLIAM ORTWEIN: We will, certainly.

10 THE COURT: Because I think they're going to scatter.
11 And we have Thanksgiving coming up and other holidays coming
12 up. So the quicker you can do that, the better.

13 I'm also assuming that in view of the decision there
14 will be motions for a new trial and motions for judgment
15 notwithstanding the jury's verdict. There are some time
16 limits on that, and I'm assuming that you will try to comply
17 with those time limits and not ask for an extension.

18 MS. CORY: Your Honor, without an extension on the
19 original request for --

20 THE COURT: New trial.

21 MS. CORY: -- for new trial as to the guilt/innocence
22 phase, and, yes, Your Honor, we will either get it done within
23 the time limits or request an extension on the penalty phase.

24 THE COURT: Mr. Neff, anything further?

25 MR. NEFF: No, thank you, Your Honor.

1 THE COURT: Ms. Palmer, I think I ordered that the
2 jury's decision be filed and recorded. If I did not do so, I
3 will make that order at this time.

4 END OF PROCEEDINGS

5
6
7 I, Elizabeth B. Coffey, do hereby certify that I
8 reported in machine shorthand the proceedings in the
9 above-styled cause, and that this transcript is an accurate
10 record of said proceedings.

11
12
13 s/Elizabeth B. Coffey
14 Elizabeth B. Coffey,
 Official Court Reporter
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